

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible to)	WC Docket No. 09-197
Receive Universal Service Support)	
)	
VIRGIN MOBILE USA, L.P.)	
)	
Petition for Forbearance)	

PETITION FOR FORBEARANCE OF VIRGIN MOBILE USA, L.P.

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),¹ Virgin Mobile USA, L.P. (“Virgin Mobile”) petitions the Federal Communications Commission (the “Commission”) to forbear from enforcing Section 214(e)(5) of the Act and Section 54.207 of the Commission’s rules² in connection with Virgin Mobile’s applications for limited designation as an eligible telecommunications carrier (“ETC”) to participate in the federal Lifeline program. More specifically, Virgin Mobile seeks such forbearance with respect to (1) those areas previously approved by the Federal Communications Commission,³ (2) those areas where Virgin Mobile has been previously approved by several states for Lifeline ETC status as identified in Exhibit 1, (3) those areas where Virgin Mobile has Petitions for Lifeline ETC status

¹ 47 U.S.C. § 160.

² 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

³ See *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. §214(e)(1)(A)*, Order, 24 FCC Rcd 3381(2009) (approving Virgin Mobile Lifeline ETC applications for New York, Pennsylvania, Virginia, North Carolina and Tennessee “in its licensed service areas”) (“*Virgin Mobile Forbearance Order*”) and *In the Matter of Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, 25 FCC Rcd 17797 (2010) (approving Virgin Mobile Lifeline ETC applications for Alabama, Connecticut, the District of Columbia, Delaware and New Hampshire “for portions of its licensed service areas”) (“*Second Virgin Mobile Order*”).

pending as identified in Exhibit 1, and (4) any remaining states where Virgin Mobile has not yet filed for Lifeline ETC status, pursuant to § 214(e)(2) of the Act.⁴

The Commission recently released an Order addressing similar petitions for forbearance filed by Cricket Communications and NTCH.⁵ In this Order, the Commission stated:

These petitions seek forbearance from the requirement that the service area of a competitive eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETCs.

We conclude that forbearance in these limited circumstances furthers the Act's and Commission's goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program. Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in this limited circumstance is not necessary to ensure that rates remain just and reasonable or to protect consumers.⁶

The forbearance Virgin Mobile seeks is identical to that given in the Cricket Order. Virgin Mobile is seeking, or has sought and has been authorized by the Commission and by state commissions, designation as a Lifeline ETC within Virgin Mobile's service footprint. In some cases, Virgin Mobile's service footprint area may be smaller than the service area of the incumbent RLEC. To date, with the exception of Kansas,⁷ neither the FCC nor any state

⁴ 47 U.S.C. § 214(e)(2).

⁵ *In the Matter of Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, FCC 11-137, released Sept. 16, 2011 ("the Cricket Order").

⁶ *Id.*, ¶¶ 1 and 2, footnote omitted.

⁷ The Kansas Corporation Commission has redefined the study area of several RLECs in Kansas. *In the Matter of Virgin Mobile, USA, L.P.'s Petition for Limited Designation as an Eligible Telecommunications Carrier*, Docket No. 10-VMBZ-657-ETC, issued Nov. 2, 2011. Virgin Mobile will file for redefinition confirmation with the Commission pursuant to the Kansas Order.

regulatory body has redefined Virgin Mobile's service area, required that its service area conform to the service area of the RLEC, or otherwise indicated that this was a matter of concern. In all cases, Virgin Mobile has been operating within its licensed area and in compliance with its designation orders. However, given the release of the Cricket Order, and out of an abundance of caution, Virgin Mobile is hereby filing the instant Petition for Forbearance from application of the rural study area rules.

State commissions have regarded previous FCC orders, such as the Virgin Mobile Orders, in which the FCC authorized the competitive ETC to provide Lifeline service in the ETC's "licensed service areas" without redefinition of the RLEC study area, as implicit authorization for competitive ETCs to provide Lifeline service in RLEC areas without application of the study area redefinition requirement. Numerous state commissions have authorized multiple Lifeline-only ETCs to operate in partial RLEC study areas.

The Cricket Order, however, declined to extend the forbearance to all similarly situated parties. As a result, Virgin Mobile is seeking forbearance.

I. BACKGROUND

Virgin Mobile provides prepaid wireless services on a common carrier basis, offering customers wireless voice, messaging, and data plans without a fixed-term contract or a credit check. Virgin Mobile also offers a Lifeline program under the name "Assurance Wireless brought to you by Virgin Mobile." Virgin Mobile has been authorized as a Lifeline ETC in 32 states.

Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services "throughout the service area for which the designation is received." Section 214(e)(5) of the Act provides that in "the case of an area

served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States . . . establish a different definition of a service area for such company.⁸ Section 54.207 of the Commission’s rules provides a series of steps to follow at the federal and state level to ensure that cream-skimming⁹ or other harm to the public interest does not occur from the provision of service to these smaller areas.¹⁰ These steps often take a great deal of time to complete and are an expense and time burden on both the carrier and the regulator.

Virgin Mobile’s coverage area in many states overlaps with a number of rural study areas, although the underlying Sprint network over which Virgin Mobile’s traffic is carried does not serve the entirety of many of those study areas. As a result, Sections 214(e)(5) and 54.207, if enforced, would preclude Virgin Mobile from operating as a Lifeline ETC in those areas which have already been designated by the Commission and several states and in which Virgin Mobile has been offering Assurance Wireless service for a substantial period and has a substantial customer base. Virgin Mobile began operations in these areas pursuant to FCC or state commission approval under the good faith assumption that Sections 214(e)(5) and 54.207 applied only to carriers receiving High Cost USF, and not to Lifeline-only carriers. Requiring the Commission and the states to go through the process of redefining RLECs’ study areas would be a waste of resources and would disrupt the Lifeline service of Assurance Wireless customers

⁸ 47 U.S.C. § 214(e)(5).

⁹ See *Virgin Mobile Forbearance Order* at ¶ 38 n. 101, where the Commission stated, “In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking Lifeline support only.”

¹⁰ 47 C.F.R. § 54.207.

in those areas if their service would need to be terminated while a redefinition of the study area is pending at the state level and the Commission.

II. THE FORBEARANCE STANDARD

Section 10(a) of the Act provides that the Commission shall forbear from applying any provision of the Act to a telecommunications carrier if the Commission determines that (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) forbearance from applying such provision is consistent with the public interest.¹¹ Section 10(b) of the Act provides that the Commission, when evaluating whether forbearance would be consistent with the public interest, shall consider whether such forbearance would promote competitive market conditions or enhance competition.¹²

III. DISCUSSION

Forbearance from enforcement of Sections 214(e)(5) and 54.207 in connection with Virgin Mobile's Lifeline ETC authorizations is appropriate and, indeed, required because: (i) enforcement is not necessary to ensure that Virgin Mobile's rates, terms and conditions are just, reasonable, and non-reasonably discriminatory; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance is consistent with the public interest. It is also fully consistent

¹¹ 47 U.S.C. § 160(a).

¹² See *Virgin Mobile Forbearance Order* at ¶38 n. 101.

with the Commission's actions in its Cricket/NCTH Order and necessary to ensure competitive neutrality in the Commission's interpretation of its rules.

Enforcement of Sections 214(e)(5) and 54.207 is not necessary to ensure that Virgin Mobile's rates, terms and conditions are just, reasonable and non-discriminatory. These sections have no bearing on Virgin Mobile's relationship with its customers. Instead, these sections deal with ETCs' service in RLEC areas and are designed to prevent cream-skimming by ETCs and to avoid complicating the RLEC calculations of high-cost support.

Customers are not harmed if forbearance is granted. Virgin Mobile is or soon will be making Lifeline service available to customers in the RLEC areas in question. This gives these consumers access to lower rates and provides a means of communication many would not otherwise be able to afford. Thus, enforcement of Sections 214(e)(5) and 54.207 is not necessary to protect consumers.

Finally, the public interest is promoted through forbearance. Forbearance would allow Virgin Mobile to continue to offer Lifeline services in RLEC areas where it has already entered on a good faith basis pursuant to Commission Orders or the orders of state commissions. The public interest is not served by withdrawing Lifeline service from Virgin Mobile from those customers who have already subscribed and established a successful relationship with Virgin Mobile. These discounted services provide a valuable communications channel for these established customers. The prepaid nature of Virgin Mobile's offerings, including a 250 free minute plan, offers an attractive Lifeline option that may not otherwise be available to low income consumers.

Virgin Mobile plays a crucial part in the marketplace by allowing many deserving citizens who cannot qualify for or otherwise afford the services provided by other

communications carriers to enjoy the benefits of wireless communication. The Commission has already found that the services that Virgin Mobile offers as a Lifeline carrier fulfill the public interest.¹³ Forbearance from enforcement of Sections 214(e)(5) and 54.207 will simply allow Virgin Mobile to continue to provide quality Lifeline services within RLEC areas where it already operates on a good faith basis pursuant to Commission and state commission Orders, or expedite entry into new areas to be approved by state commissions. Forbearance would allow Virgin Mobile to operate within the areas it has previously requested or in areas that it might request Lifeline ETC designation, and where approval would be necessary from the appropriate state commission.

IV. ANTI-DRUG ABUSE CERTIFICATION

Virgin Mobile is not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.

¹³ See *Virgin Mobile Forbearance Order* at ¶¶ 38-39 and *Second Virgin Mobile Order* at ¶¶ 19-26.

V. CONCLUSION

For the reasons set forth above, Virgin Mobile respectfully submits that forbearance from the enforcement of Sections 214(e)(5) of the Act and 54.207 of the Commission's rules against Virgin Mobile is appropriate and required.

Respectfully submitted,
VIRGIN MOBILE USA, L.P.

/s/ Charles W. McKee

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APPENDIX A
DESCRIPTION OF RELIEF SOUGHT

Virgin Mobile hereby provides the following information required by Section 1.54(a) and (e) of the Commission's rules, 47 C.F.R. §§ 1.54(a), (e):

- (1) Virgin Mobile petitions the Commission to forbear from enforcing Section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and Section 54.207 of the Commission's rules, 47 C.F.R. § 54.207.
- (2) Virgin Mobile seeks forbearance on behalf of itself only.
- (3) Virgin Mobile seeks forbearance with respect to its provision of Commercial Mobile Radio Service ("CMRS").
- (4) Virgin Mobile seeks forbearance with respect to (i) those areas in New York, Pennsylvania, Virginia, North Carolina, Tennessee, Alabama, Connecticut, District of Columbia, Delaware and New Hampshire where Lifeline ETC status has been granted by the Commission; (ii) those areas in other states where Virgin Mobile has sought, or will seek, designation as a Lifeline ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.

Virgin Mobile has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

All supporting data upon which Virgin Mobile intends to rely, for purposes of this petition, are included in the preceding narrative. Virgin Mobile is not relying on any separate market analysis, and, as such, Virgin Mobile is not attaching a separate appendix with supporting data.

EXHIBIT 1

Applications Approved	Docket Number	Approval Date	
Alabama	FCC – WC Docket No. 09-197	12/29/2010	
Arkansas	Docket No. 10-034-U	3/3/1011	
California	Resolution No. T-17284	5/5/2011	
Connecticut	FCC – WC Docket No. 09-197	12/29/2010	
Delaware	FCC – WC Docket No. 09-197	12/29/2010	
District of Columbia	FCC – WC Docket No. 09-197	12/29/2010	
Florida	Docket No. 090245-TP	5/19/2010	Additional confirming Order on 7/12/2010
Georgia	Docket No. 31297	3/18/2011	
Indiana	Cause No. 41052 ETC 55	11/10/2010	
Iowa	Docket No. IAC-2010-3902	1/13/2011	
Kansas	Docket No. 14-VMBZ-657-ETC	11/2/2011	
Kentucky	Cause No. 2010-00524	6/10/2011	
Louisiana	Docket No. S-31282	7/12/2010	
Maine	Docket No. 2011-10	8/10/2011	
Maryland	ML# 121433 TE-10097	4/14/2010	Additional confirming Order on 7/9/2010
Massachusetts	Docket No. 10-11	9/9/2011	
Michigan	Case No. U-15966	3/18/2010	
Mississippi	Docket No. 2010-UA-118	10/25/2010	
New Hampshire	FCC – WC Docket No. 09-197	12/29/2010	
New Jersey	Docket No. TO10020093	8/4/2010	
New York	FCC – CC Docket No. 96-45	3/5/2009	
North Carolina	FCC – CC Docket No. 96-45	3/5/2009	
Ohio	Case No. 10-429-TP-UNC	5/19/2011	
Pennsylvania	P-2010-2155915	12/22/2010	
Rhode Island	Docket No. 4250	8/31/2011	
South Carolina	Docket No. 2010-91-C	1/26/2011	
Tennessee	FCC – CC Docket No. 96-45	3/5/2009	
Texas	Docket No. 38056	5/18/2010	
Utah	Docket No. 10-2521-01	5/25/2011	
Virginia	FCC – CC Docket No. 96-45	3/5/2009	
Washington	Docket No. UT-100203	11/10/2010	
West Virginia	Case No. 10-0246-C-PC	9/21/2010	

Pending Applications	Docket Number	Filing Date	
Arizona	T-20827A-11-0461	12/21/2011	
Colorado	Docket No. 11A657T	8/8/2011	The parties filed a stipulated settlement agreement with the Commission on January 6, 2012 and are awaiting approval of the stipulation.
Idaho	Case No. VMU-T-11-01	2/03/2011	The staff is waiting to for the TracFone appeal period to end before proceeding further on the Virgin Mobile application.
Minnesota	Docket P6836M-11-314	4/6/2011	Recommended for approval but awaiting Commission action.
New Mexico	Case No. 11-00158-UT	4/25/2011	Hearings were held on December 8, 2011.
Oregon	Docket No. UM 1522	2/1/2011	The parties filed a stipulated settlement agreement with the Commission on December 14, 2011 and are awaiting approval of the stipulation.
Wisconsin	Docket No. 9592-TI-100	4/21/2011	Currently working through issues with staff with the expectation that approval will occur shortly.